

CONTRACT GENERAL CONDITIONS

La Selva Beach Recreation District

Clubhouse Seismic and ADA Renovation Project

314 Estrella Avenue, La Selva Beach, CA 95076

3/31/23

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ARTICLE 1 GENERAL CONDITIONS

1.1 BASIC DEFINITIONS

1.1.1 The Contract Documents. The “Contract Documents” consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to bid, Instructions to Bidders, Notice to Bidders, the Bid Form, Payment Bond, Performance Bond, required insurance certificates, additional insured endorsement and declarations page, Designation of Subcontractors, Non collusion Declaration, Sufficient Funds Declaration (Labor Code section 2810), and other documents referred to in the Agreement, and Modifications issued after execution of the Agreement. A Modification is a written amendment to the Contract signed by both parties, a Change Order, a Construction Change Directive, or a written order for a minor change in the Work issued by the Owner. The Contract Documents are complementary, and each obligation of the Contractor, Subcontractors, material or equipment suppliers in any one shall be binding as if specified in all.

1.1.2 The Contract. The Contract Documents form the Contract. The “Contract” represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and Contractor, between any construction manager and the Contractor, between the Owner and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the Owner and the Contractor. The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties and approved or ratified by the Governing Board.

1.1.3 The Work. The “Work” shall include all labor, materials, services, manuals, training, as-builts, and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents, including, but not limited to, punch list items and submission of documents.

1.1.4 The Project. The “Project” is the total construction of the Work performed in accordance with the Contract Documents. However, where applicable, “Project” may also include construction by the Owner or by separate contractors of improvements related to, but not included in, the Work. The Project shall constitute a “work of improvement” under Civil Code section 8050 and Public Contract Code section 7107.

1.1.5 The Drawings. The “Drawings” are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including

plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect.

1.1.6 The Specifications. The “Specifications” are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.

1.1.7 The Project Manual. The “Project Manual” is the volume usually assembled for the Work which may include, without limitation, the bidding requirements, sample forms, Agreement, Conditions of the Contract, and Specifications. **N/A**

1.1.8 OR. “Or” shall include “and/or.”

1.1.9 Completion. Statutory definitions of “Completion” and “Complete” shall apply for those statutory purposes. For all other purposes, including accrual of liquidated damages, Claims, and warranties, “Completion” and “Complete” mean the point in the Work where (1) Contractor has fully and correctly performed all Work in all parts and requirements, including corrective and punch list Work, and (2) Owner’s representatives have conducted a final inspection that confirmed this performance. Substantial, or any other form of partial or non-compliant, performance shall not constitute “Completion” or “Complete” under the Contract Documents, except to the extent that substantial completion is required for a milestone deadline.

1.1.10 Completion of the Project For purposes of accrual of liquidated damages for delay to the Project, *completion* shall mean the point in the Project where (1) all contractors and Owner have fully and correctly performed all work of the entire Project in all parts and requirements, including corrective and punch list work, and (2) Owner’s representatives have conducted a final inspection of the entire Project that confirmed this performance. Substantial, or any other form of partial or non-compliant, performance shall not constitute *completion* or *complete*.

1.2 EXECUTION, CORRELATION AND INTENT - The Contract Documents are complementary and are intended to include all items required for the proper execution and Completion of the Work. Any item of Work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both. Without limiting Contractor’s obligation to identify conflicts for resolution by the Owner, in the event of a conflict between provisions of the Contract Documents, it is intended that the more stringent, higher quality, and greater quantity of Work shall apply. Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction. Where requirements of the Contract Documents exceed those of the applicable building codes and ordinances, the Contract Documents shall govern. Contractor shall comply with all applicable Federal, State and local laws.

1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS - The Drawings, Specifications, and other documents prepared on behalf of the Owner are instruments of the services of the Architect and its consultants and are the property of the Owner. The Contractor may retain one contract record set.

ARTICLE 2 OWNER

2.1 DEFINITION - The term "Owner" means the person or entity identified as such (La Selva Beach Recreation District) in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "District or Owner" means the Owner or the Owner's authorized representatives, including, but not limited to, architects and construction managers. To the extent the Contract Documents indicate that Owner has assigned duties to particular representatives of the Owner (such as the architect, or any construction manager), Owner reserves the right at all times to reassign such duties to different Owner representatives.

2.2 EXISTING UTILITY LINES; SITE SURVEY; CONTRACTOR RELIANCE – Pursuant to Government Code section 4215, the Owner assumes the responsibility for removal, relocation, and protection of utilities located on the Site at the time of commencement of construction under this Contract with respect to any such utility facilities which are not identified in the drawings and specifications made part of the invitation to bid. The Contractor shall not be assessed for liquidated damages for delay in Completion of the Work caused by failure of the Owner to provide for removal or relocation of such utility facilities. Owner shall compensate the Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, removing or relocating such utility facilities, and for equipment necessarily idle during such Work.

The Contractor may rely upon the accuracy of any utility services or site survey information that the Owner may provide, except that the Contractor may not rely upon and must question in writing to the Owner and the Architect any information which appears incorrect based upon Contractor's Site inspection, knowledge of the Work, and prior experience with similar projects, unless specifically stated in writing that the Contractor may rely upon the designated information.

2.3 OWNER'S RIGHT TO STOP THE WORK - If the Contractor fails to correct Work, which is not in accordance with the requirements of the Contract Documents as required by Section 12.2, or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may order the Contractor to stop the Work or any portion thereof, until the Contractor corrects the deficiencies. Contractor shall not be entitled to a time extension for any delays caused by such order.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK - If the Contractor fails or refuses to carry out the Work in accordance with the Contract Documents, the Owner may correct such deficiencies by whatever reasonable method the Owner may deem expedient without prejudice to other remedies the Owner may have, including but not limited to having another contractor perform some or all of the Work without terminating the Contract. Owner shall first provide written notice to Contractor of Contractor's failure or refusal to perform. The notice will provide the time period within which Contractor must begin correction of the failure or refusal to perform. If the Contractor fails to begin correction within the stated time, or fails to continue correction, the Owner may proceed to correct the deficiencies. In the event the Owner bids the work, Contractor shall not be eligible for the award of the contract. The Contractor may be invoiced the cost to Owner of the work, including compensation for additional professional and internally generated services and expenses made necessary by Contractor's failure or refusal to perform. Owner may withhold that amount from the retention, or progress payments due the Contractor, pursuant to Section 9.5. If retention and payments withheld then or thereafter due the Contractor are not sufficient to cover that amount, the Contractor shall pay the difference to the Owner.

ARTICLE 3 THE CONTRACTOR

3.1 DEFINITION - The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representatives. To the extent that any portion of the Work is provided with the Contractor's own forces, any reference to Subcontractors shall be equally applicable to the Contractor. The Contractor shall post at appropriate conspicuous points on the Site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned and all other required job site notices as prescribed by regulation.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 Contractor. The Contractor shall supervise and direct the Work using the Contractor's best skill and attention, which shall meet or exceed the standards in the industry. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

If part of the Project is performed by other contractors Owner directly retains, Owner shall schedule and coordinate the activities of Contractor with the other contractors and Owner. Contractor agrees to accept the Owner's construction schedules, schedule updates, overall sequence and coordination of construction for the Project.

Contractor realizes that work by other contractors or Owner may occur simultaneously with Contractor's Work in any given area. Contractor is responsible for its own sequences within a

given activity or set of activities. Contractor shall not commit, or permit, any act which will adversely affect the work of any other contractor or Owner. Contractor shall provide layout of its Work at the request of any other contractor or Owner.

3.2.2 Contractor Responsibility. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.

3.2.3 Obligations not Changed by Other's Actions. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by the activities or duties of the Owner's representatives, including but not limited to, any construction manager, the Architect or Inspector of Record, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

3.2.4 Contractor Responsibility for Readiness for Work. The Contractor shall be responsible for inspection of Work already performed under the Contract Documents to determine that such portions are in proper condition to receive subsequent Work.

3.3 SUPERINTENDENT - The Contractor shall provide a competent superintendent and assistants as necessary, all of whom shall be reasonably proficient in speaking, reading and writing English and, who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled workers on the job to Complete the Work in accordance with all requirements of the Contract Documents. Owner shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier, etc., for cause.

3.4 LABOR AND MATERIALS - Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and Completion of the Work whether temporary or permanent, and such facilities, labor, equipment, material, and services are included in the Work. Owner shall have no responsibility for security of, or repair or replacement costs of, such facilities, labor, equipment, material, and services provided by Contractor pursuant to this subsection. The Contractor shall be responsible for cutting, fitting, or patching required to Complete the Work or to make its parts fit together properly.

3.5 WARRANTY - For the period of one (1) year after Completion of the Work, the Contractor warrants to the Owner that material and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents, per Section 12.2.

3.6 TAXES - Contractor will pay all applicable Federal, State, and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents.

3.7 PERMITS, FEES AND NOTICES - Owner has already obtained and paid for the permit. The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and Completion of the Work which are customarily secured after execution of the Contract and are legally required by any authority having jurisdiction over the Project.

3.8 ALLOWANCES - The Contractor shall include in the Contract Sum all allowances, stated in the Contract Documents. Items covered by specific allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against whom the Contractor makes reasonable and timely objection.

3.9 CONTRACTOR'S CONSTRUCTION SCHEDULES - The Contractor, promptly after executing the Contract, shall prepare and submit for the Owner's and any construction manager's information the construction schedule for the Work, which shall conform to the Contract Documents requirements. The schedule shall not exceed time limits current under the Contract Documents and shall comply with all of the scheduling as required by the Contract Documents (including these General Conditions and the Milestone Bidding Schedule) and the standards of the industry. The construction schedule shall be in the form of a, chart, or graph and shall be in sufficient detail to show the chronological and sequential relationship of all activities of the Project including, but not limited to, estimated starting and completion dates of various activities (including early and late dates and reasonable float for each activity), each activity's predecessor and successor activities, procurement of materials, the critical path, and scheduling of equipment. Contractor shall submit an updated schedule by the first day of every month, and whenever else requested by the Owner. Each schedule update must include an accurate as-built schedule and the current as-planned schedule, both of which shall conform to the Contract Documents' requirements. In addition, Contractor will provide a "Three Week Look Ahead" schedule at every Owner/Architect/ Contractor (OAC) meeting so as to discuss with all the work to be done in the following three months to better show being on schedule with work, as well as specific work needing coordination in the near future. Failure of the Contractor to provide proper schedules as required by this paragraph may, at the sole discretion of Owner, constitute either grounds to withhold, in whole or in part, progress payments to the Contractor, or a breach of contract allowing Owner to terminate the Contract.

3.10 DOCUMENTS AND SAMPLES AT THE SITE - The Contractor shall maintain at the Site for the Owner one applicable copy of Titles 19 and 24 and record copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction. In addition, the Contractor shall maintain at the Site approved Shop Drawings, Product Data, Samples, and similar required submittals.

3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.11.1 Shop Drawings. The term “shop drawings” as used herein means drawings, diagrams, schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work. The Contractor shall obtain and submit with the shop drawings all seismic and other calculations and all product data from equipment manufacturers. Shop drawings shall: establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

3.11.2 Samples. The term “samples” as used herein are physical examples furnished by Contractor to illustrate materials, equipment, or quality. All Work shall be in accordance with the approved samples.

3.11.3 Contractor’s Responsibility. Contractor shall obtain and shall submit to Architect all required shop drawings and samples in accordance with Contractor’s “Schedule for Submission of Shop Drawings and Samples” as required with such promptness as to cause no delay in its own Work or in that of any other contractor, Owner or subcontractor but in no event later than twenty (20) days after the execution of the Agreement. Review by Owner and Architect shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper shop drawings, product data and samples in accordance with the Contract Documents. Any submission, which in Architect’s opinion is incomplete, contains numerous errors, or has been checked only superficially by Contractor will be returned unreviewed by the Architect for resubmission by the Contractor. Contractor shall not commence any portion of the Work requiring a shop drawing or sample submission until the Architect has approved the submission.

3.11.4 Extent of Review. In reviewing shop drawings, the Owner will not verify dimensions and field conditions. The Architect will review and approve shop drawings, product data, and samples for aesthetics and for conformance with the design concept of the Work and the information given in the Contract Documents. The Architect’s review shall not relieve the Contractor from responsibility for any deviations from the requirements of the Contract Documents unless the Architect has given specific written approval. Contractor and Subcontractors shall be solely responsible for determining any quantities, whether or not shown on the shop drawings.

3.11.5 Substitution. Unless the Specifications state that no substitution is permitted, whenever in the Contract Documents any specific brand or trade name is specified such specification shall be deemed to be followed by the words “or equal.” The Owner may consider an untimely substitution request if the product specified is no longer commercially available.

3.12 CLEANING UP - The Contractor shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Contract. The Site shall be maintained in a safe, neat and orderly condition. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so, without prior notice to the Contractor and the cost thereof shall be invoiced to the Contractor and withheld from progress payments and/or retention. When directed by the Owner or the Architect, Contractor and Subcontractor shall dismantle temporary structures, if any, and remove from the Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Contractor or Subcontractor.

3.13 ACCESS TO WORK - The Contractor shall provide the Owner, the Architect, and the Inspector, access to the Work in preparation and progress wherever located.

3.14 ROYALTIES AND PATENTS - The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims of infringement of patent rights and shall hold the Owner and the Architect harmless and indemnify them from loss on account thereof, to the extent not caused by the Owner’s active negligence, sole negligence or willful misconduct, and shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by the Contract Documents, unless Contractor has reason to believe it is an infringement of a patent and does not inform Architect.

3.15 INDEMNIFICATION

3.15.1 Scope: Contractor. To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner, the construction manager, Architect, Architect’s consultants, Boards of Trustees, members of the Boards of Trustees, and directors (“Indemnitees”), from and against claims, actions, damages, liabilities, losses (including but not limited to injury or death of persons, property damage, and compensation owed to other parties), and expenses (including but not limited to attorneys’ fees and costs including fees of consultants) alleged by third parties against Indemnitees arising out of or resulting from the following: Contractor’s, its Subcontractors’, or its suppliers’ performance of the Work, including but not limited to the Contractor’s or its Subcontractors’ use of the Site; the Contractor’s or its Subcontractors’ construction of the Project, or failure to construct the Project, or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Contractor or its Subcontractors or their respective agents, employees, material or equipment suppliers, invitees,

or licensees but only to the extent caused in whole or in part by the acts or omissions of the Contractor, its Subcontractors, its suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. The obligation to defend, indemnify and hold harmless includes any claims or actions by third parties arising out of or resulting from Labor Code section 2810. Contractor shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Contractor.

3.15.2 Scope: Subcontractors.

3.15.2.1 Indemnity. The Subcontractors shall defend, indemnify, and hold harmless the Indemnitees from and against claims, actions, damages, liabilities, and losses (including but not limited to injury or death of persons, property damage, and compensation owed to other parties), and expenses (including but not limited to attorneys' fees and costs including fees of consultants) alleged by third parties against Indemnitees arising out of or resulting from the following: Subcontractors' performance of the Work, including but not limited to the Subcontractors' use of the Site; the Subcontractors' construction of the Project or failure to construct the Project or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment, including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. This obligation to defend, indemnify and hold harmless includes any claims or actions by third parties arising out of or resulting from Labor Code section 2810. Subcontractors shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Subcontractors.

3.15.2.2 Joint and Several Liability. In the event more than one Subcontractor is connected with an accident or occurrence covered by this indemnification, then all such Subcontractors shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying Subcontractors for the loss and expense of any such indemnification shall be resolved without jeopardy to any Indemnitee. The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnitee for its own negligence if not permitted by law or to eliminate or reduce any other indemnification or right which any Indemnitee has by law or equity.

3.15.3 No Limitation. The Contractor's and the Subcontractor's obligation to indemnify and defend the Indemnitees hereunder shall include, without limitation, any and all claims, damages, and costs: for injury to persons and property (including loss of use), and sickness, disease or death of any person; for breach of any warranty, express or implied; for failure of the Contractor or the Subcontractor to comply with any applicable governmental law, rule, regulation, or other requirement; and for products installed in or used in connection with the Work.

3.16 NOTICE OF EXCUSE FOR NONPERFORMANCE - If Contractor believes that acts or omissions of Owner (including, but not limited to, Owner-caused delay) have prevented Contractor from performing the Work as required by the Contract Documents and Contractor intends to rely on Owner's acts or omissions and Civil Code section 1511(1) as reasons to excuse Contractor's nonperformance or to support, among other things, Contractor's requests for time extensions under these General Conditions, Contractor shall provide written notice of the excuse within five (5) days of the Owner's acts or omissions. If Contractor fails to timely submit the written notice, Contractor shall have waived any right to later rely on the acts or omissions as a defense to Contractor's nonperformance or as the basis for a time extension, regardless of the merits of the defense or time extension. Contractor will not have satisfied a condition precedent or exhausted administrative remedies. Contractor acknowledges that these written notices are of critical importance to the Owner's Project management and the mitigation of Project costs and delays.

3.17 RECOVERY OF DAMAGES FROM OWNER

Notwithstanding any other provisions of the Contract Documents, Contractor expressly waives its right to recover any special, consequential, or indirect damages from Owner in relation to this Contract or the Project. Contractor may only recover general (also known as direct) damages from Owner to the extent allowed by the Contract Documents.

3.18 FEDERAL FUNDS

If federal funds are used in whole or in part for the Project, Contractor shall comply with all applicable federal laws, rules, regulations, and other requirements.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT - The term “Architect” means the Architect or the Architect’s authorized representative, shall also refer to all consultants under the Architect’s direction and control, and is referred to as if singular in number. The Architect will have authority to act on behalf of the Owner only to the extent set forth in the Owner/Architect agreement as well as Owner/Construction Manager agreement.

4.2 ARCHITECT’S ADMINISTRATION OF THE CONTRACT

4.2.1 Status. The Architect may provide administration of the Contract as described in the Contract Documents and may be one of several Owners’ representatives during construction.

4.2.2 Limitations of Construction Responsibility. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

4.2.3 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications are warranted by special circumstances, the Owner and the Contractor shall communicate through the Architect, as well as the construction manager for the Project, unless the Owner directs otherwise.

4.2.4 Rejection of Work. In addition to the rights, duties, and obligations of the Inspector of Record under this Article, the Architect may recommend to the Owner that the Owner reject Work which does not conform to the Contract Documents.

4.3 INSPECTOR OF RECORD - N/A

4.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE OWNER FOR PROFESSIONAL SERVICES - If at any time prior to the Completion of the requirements under the Contract Documents, through no fault of its own, the Owner is required to provide or secure additional professional services for any reason by any act or omission of the Contractor, the Contractor shall be invoiced by the Owner for any actual costs incurred for any such additional services, which costs may, among other remedies, be withheld from the progress payments and/or retention; *except that* to the extent that such additional services constitute Owner’s delay damages under Public Contract Code section 7203, Owner may not recover them or invoice Contractor for them.

4.5 CLAIMS

4.5.1 General. A “Claim” is a separate demand by the Contractor sent by registered mail or certified mail, return receipt requested, for (a) a time extension, including without

limitation, a request for relief from damages or penalties for delay assessed by the Owner under the Contract Documents; (b) payment by Owner of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract Documents, and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to; or (c) an amount the payment of which is disputed by the local agency. A Claim includes any dispute Contractor may have with the Owner, including one regarding an alleged breach of contract or violation of law by the Owner (such as wrongful withholding of a payment by the Owner or wrongful termination by the Owner) or an alleged violation of a prompt payment statute. The responsibility to substantiate Claims shall rest with the Contractor, including any pass through claims for which Contractor will comply with Public Contract Code section 9204(d)(5).

Claims, including those alleging an error or omission by the Architect, shall be submitted to the Architect, CM, and Owner. If Contractor intends to rely on Owner's acts or omissions in support of a request for a time extension, then Contractor must also provide the notice set forth in section 3.16, above. A timely decision by the Owner shall be provided.

Claims must be made in writing within thirty (10) days of the date when Contractor knew, or should have known, about the event or issue on which it bases its claim.

An additional Claim made after the initial Claim has been implemented by Change Order will not be considered. The failure of the Contractor to make a Claim within the specified time shall constitute an express waiver of any right to assert such Claim, whether affirmatively or defensively. Despite submission or rejection of a Claim, the Contractor shall proceed diligently with performance of the Contract, and the Owner shall continue to make any undisputed payments in accordance with the Contract. When any excavation or trenching extends greater than four feet below the surface, Public Contract Code section 7104 shall control.

The Contractor shall furnish reasonable documentation to support each Claim and certify, at the time of submission of a Claim, as follows:

I, _____, being the _____ (Must be an officer) of _____ (Contractor), declare under penalty of perjury under the laws of the State of California, and do personally certify and attest that: I have thoroughly reviewed the attached Claim for additional cost and/or extension of time, and know its contents, and said Claim is made in good faith; the supporting data is truthful, accurate and complete; that the amount requested accurately reflects the adjustment for which the Contractor believes the Owner is liable; and further, that I am familiar with California Penal Code section 72 pertaining to false claims, and further know and understand that submission or certification of a false claim may lead to fines, imprisonment and/or other severe legal consequences.

By: _____

Contractor understands and agrees that any Claim submitted without this certification does not meet the terms of the Contract Documents, that Owner, or Owner's representatives, may reject

the Claim on that basis and that unless Contractor properly and timely files the Claim with the certification, Contractor cannot further pursue the Claim in any forum. A condition precedent will not have been satisfied.

4.5.2 Claims for Concealed or Unknown Conditions

4.5.2.1 Trenches or Excavations Less Than Four Feet below the Surface. If Contractor encounters conditions at the Site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the Contractor shall be given to the Owner promptly before conditions are disturbed and in no event later than five (5) days after first observance of the conditions. If Contractor believes that such conditions differ materially and will cause an increase in the Contractor's cost of, time required for, or performance of any part of the Work, Contractor must comply with the provisions above for Claims.

4.5.2.2 Trenches or Excavations Greater Than Four Feet below the Surface. Pursuant to Public Contract Code section 7104, when any excavation or trenching extends greater than four feet below the surface:

4.5.2.2.1 The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:

(1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

4.5.2.2.2 The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required or, performance of any part of the Work shall issue a change order under the procedures described in the Contract.

4.5.2.2.3 In the event that a dispute arises between the public entity and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled Completion deadline provided by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

4.6 PROCEDURES FOR CLAIMS - Notwithstanding any other provision herein, Claims shall be handled pursuant to the procedures set forth in Public Contract Code section 9204, including claim, written response, payments, meet and confer conference, statement of disputed and undisputed portions after the meet and confer conference and non-binding mediation, and Government Code claim provisions. For any Claims of \$375,000 or less, Public Contract Code sections 20104 et seq. shall also apply, except to the extent they do not conflict with Public Contract Code section 9204. Owner may request additional documentation from Contractor within applicable time periods. As a precedent to initiation of any litigation against the Owner, Contractor must observe and comply with the Government Code claim procedures in Government Code sections 901 et seq. after completion of the contractual claim procedures above, including but not limited to timely presentation of a Government Code claim. The claim procedures described herein do not supersede or replace the requirement of a Government Code claim, and the two claim procedures shall be sequential.

The requirement for mediation shall not toll or supersede the requirement for submission of a Government Code claim, as specifically required in this Section 4.6, above. If Contractor fails to timely notify the Owner in writing that it wishes to mediate pursuant to this paragraph, then Contractor will have waived all rights to further pursue the Claim. The parties shall reasonably cooperate to schedule and attend mediation as soon as reasonably possible.

ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 Subcontractor. A Subcontractor is a person or entity, who has a contract with the Contractor to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. To the extent that the term Trade Contractor is utilized in the Contract Documents, it shall have the same meaning as the term "Subcontractor."

5.1.2 Sub-Subcontractor. A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK - Subcontractors shall be listed by Contractor pursuant to Public Contract Code section 4104. Subcontractor substitution shall be handled in accordance with Public Contract Code sections 4107 and 4107.5. Any substitutions of Subcontractors shall not result in any increase in the Contract Sum or the granting of any extension of time for a Milestone Deadline or the Completion of the Work.

5.3 SUBCONTRACTUAL RELATIONS - By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities, which the Contractor, by the Contract Documents, assumes toward the Owner.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS - Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

A. Assignment is effective only after termination of the Contract with the Contractor by the Owner for cause pursuant to Article 14 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

B. Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 Owner’s Rights. The Owner reserves the right to perform work related to the Project with the Owner’s own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under Conditions of the Contract identical or substantially similar to these, including those portions related to insurance. Upon the election to perform work with its own forces or by separate contracts, the Owner shall notify the Contractor. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall proceed pursuant to the Contract Documents.

6.1.2 Contractor’s Duties. Although the Owner shall have overall responsibility for coordination and scheduling of the activities of the Owner’s own forces and of each separate

contractor with the Work of the Contractor, Contractor shall cooperate with Owner. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor until subsequently revised.

6.1.3 Owner Obligations. Unless otherwise provided in the Contract Documents, when the Owner performs work related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, which apply to the Contractor under the General Conditions.

6.2 MUTUAL RESPONSIBILITY

6.2.1 Delivery and Storage. The Contractor shall afford the Owner and separate contractors reasonable opportunity for delivery and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the separate contractors' construction and operations with theirs as required by the Contract Documents.

6.2.2 Notice by Contractor. If part of the Contractor's Work depends upon proper execution or results from work by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner patent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors' Completed or partially Completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

ARTICLE 7 CHANGES IN THE WORK

7.1 CHANGES

7.1.1 No Changes without Authorization. The Owner reserves the right to change the Work by making such alterations, deviations, additions to, or deletions from the plans and specifications, as may be deemed by the Owner to be necessary or advisable for the proper Completion or construction of the Work contemplated, and the Owner reserves the right to require Contractor to perform such Work. There shall be no change whatsoever in the drawings, specifications, or in the Work without an executed Change Order, Construction Change Directive, or order by the Owner for a minor change in the Work as herein provided. Owner shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the same shall have been authorized by and the cost thereof approved in writing by Change Order or Construction Change Directive. No extension of time for performance of the Work shall be allowed hereunder unless

claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order.

7.1.2 Architect Authority. The Owner will have authority to order minor changes in the Work not involving any adjustment in the Contract Sum, an extension of the Contract Time, or a change which is inconsistent with the intent of the Contract Documents. Such changes shall be effected by written Change Order and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

7.2 CHANGE ORDERS (“CO”) - A CO is a written instrument prepared by the Contractor and signed by the Owner and the Contractor, and approved by the Owner’s governing body, stating their agreement upon all of the following: (A) A change in the Work; (B) the amount of the adjustment in the Contract Sum, if any; and (C) the extent of the adjustment in the Contract Time, if any.

7.3 CONSTRUCTION CHANGE DIRECTIVES (“CCD”) - A CCD is a written unilateral order signed by the Owner directing performance of the Work or a change in the Work. The CCD may state an adjustment in the Contract Sum, Contract Time, or Milestone Deadline. The Owner may by CCD, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions the Contract Sum and Contract Time being adjusted accordingly. A CCD shall be used in the absence of agreement on the terms of a CO. If Contractor disagrees with the terms of a CCD, it shall nevertheless perform the Work directed by the CCD, but it may pursue the notice, COR and claim procedures if Contractor believes it is entitled to changes in the Contract Sum or Contract Time.

7.4 REQUEST FOR INFORMATION (“RFI”) - An RFI is a written request prepared by the Contractor asking the Owner to provide additional information necessary to clarify an item which the Contractor feels is not clearly shown or called for in the drawings or specifications, or to address problems which have arisen under field conditions. The RFI shall reference all the applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and/or interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Sum, Contract Time, or the Contract Documents. The Owner and Contractor agree that an adequate time period for the Architect to respond to an RFI is generally fourteen (14) calendar days after the Architect’s receipt of an RFI, unless the Owner and Contractor agree otherwise in writing. However, in all cases, the Architect shall take such time, whether more or less than 14 days, as is necessary in the Architect’s professional judgment to permit adequate review and evaluation of the RFI. If Contractor informs the Architect that it needs a response to an RFI expedited to avoid delay to the critical path, the Architect shall provide a response as quickly as reasonably possible. The Contractor shall be invoiced by the Owner for any costs incurred for professional services, which shall be withheld from progress payments or retention, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request.

7.5 REQUEST FOR PROPOSAL (“RFP”) - An RFP is a written request prepared by the CM asking the Contractor to submit to the Owner and the Architect an estimate of the effect of a proposed change on the Contract Sum and the Contract Time. An RFP shall contain adequate information, including any necessary drawings and specifications, to enable Contractor to provide the cost breakdowns required by section 7.7. The Contractor shall not be entitled to any Additional Compensation for preparing a response to an RFP, whether ultimately accepted or not.

7.6 CHANGE ORDER REQUEST (“COR”) - A COR is a written request, including any “proposed change order,” prepared by the Contractor asking the Owner, CM, and the Architect to incorporate a proposed change called for in an RFP or a notice of claim into a CO. A COR shall include breakdowns to validate any change in Contract Sum due to proposed change or claim. A COR shall also include any additional time required to achieve a Milestone deadline or Complete the Work. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Work Schedule as defined in section 3.9 and Division 1 of the Specifications.

7.7 COST OF CHANGE ORDERS

7.7.1 Scope. Within ten (10) calendar days or such lesser period of time as may be required by Owner after a request is made for a change that impacts the Contract Sum or the Contract Time, the Contractor shall provide to the Owner and the Architect in writing an estimate of the effect of the proposed CO upon the Contract Sum and the actual cost of construction, which shall include a complete itemized cost breakdown of all labor, equipment, and material showing actual quantities, hours, unit prices, wage rates, required for the change, and the effect upon the Contract Time of such CO, including subcontractor cost breakdowns. Changes may be made by Owner by an appropriate written CO, or, at the Owner’s option, such changes shall be implemented immediately upon the Contractor’s receipt of an appropriate written CCD.

7.7.2 Determination of Cost. The amount of the increase or decrease in the Contract Sum resulting from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation: (A) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; (B) unit prices stated in the Contractor’s original bid, the Contract Documents, or subsequently agreed upon between the Owner and the Contractor; (C) cost to be determined as Time and Materials work in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or (D) by cost of material and labor by both Subcontractor and Contractor directly borne for the work to be done and percentage of overhead and profit. Contractor and Subcontractors may mark up their own costs by 15% for overhead, bond and insurance premiums, and profit. Contractor may mark up a Subcontractor’s total costs by 5%.

7.7.3 Accounting Records. With respect to portions of the Work performed by COs and CCDs on a time-and-materials, unit-cost, or similar basis, the Contractor shall keep and maintain cost-accounting records satisfactory to the Owner, which shall be available to the

Owner on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents. Such records will be discussed at each OAC meeting.

7.7.4 Notice Required. If the Contractor desires an increase in the Contract Sum, or any extension in the Contract Time for a Milestone Deadline or Completion, it shall give the Owner and the Architect written notice of the potential change within five (5) days after the occurrence of the event giving rise to the claim, together with detailed estimates of the impact on the Contract Sum and/or the Contract Time. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with paragraph 10.4 hereof. No notice shall be considered unless made in accordance with this Subparagraph; however, the mere presentation of such claim shall not establish the validity of the cause giving rise to such claim, or of the extension of the Contract Time, and/or the increase in the Contract Sum. Contractor shall proceed to execute the Work even though the adjustment has not been agreed upon. Any change in the Contract Sum or extension of the Contract Time resulting from such claim shall be authorized by a CO.

ARTICLE 8 TIME

8.1 DEFINITIONS

8.1.1 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Completion of the Work as noted in Milestone Bidding Schedule.

8.1.2 Notice to Proceed. The date of commencement of the Work is the date established in the Notice to Proceed. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for which the Contractor is responsible.

8.1.3 Days. The term “day” as used in the Contract Documents shall mean working day unless otherwise specifically defined.

8.2 HOURS OF WORK

8.2.1 Sufficient Force. Contractors and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work, including Work directed pursuant to a CCD (see Section 7.3, above), in accordance with the Construction Schedule.

8.2.2 Performance during Working Hours. Work shall be performed during regular working hours except that in the event of an emergency or when required to perform the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the Owner.

8.2.3 Labor Code Application. As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any Subcontractor on any subcontract under this Contract, upon the Work or upon any part of the Work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, Work performed by employees of Contractors in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work with compensation provided for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

Contractor or subcontractor shall pay to the Owner a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

8.3 PROGRESS AND COMPLETION - Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Milestone Deadlines and the Contract Time are reasonable periods for performing the Work. The Contractor shall not knowingly, except by agreement or instruction of the Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. The Contractor shall proceed expeditiously to perform the Work, including Work directed pursuant to a CCD (see Section 7.3, above), with adequate forces, labor, materials, equipment and management, shall achieve all Milestone Deadlines, and shall achieve Completion within the Contract Time.

8.4 EXTENSIONS OF TIME - LIQUIDATED DAMAGES

8.4.1 Excusable Delay. The Contractor shall be granted a reasonable time extension under the Contract Documents, including but not limited to Sections 3.18 and 4.5 and Article 7, for excusable delays, which are those delays that meet each and every of the following conditions: (a) The delay was beyond the control of Contractor and its subcontractors and material suppliers; (b) the delay was caused by events that were not reasonably foreseeable to Contractor at the time of bidding; (c) all float in the schedule had been used, and the delay impacted and delayed the controlling items of Work (i.e., the as-built critical path, as determined from the as-planned schedule and the actual progress of the Work), thus delaying the achievement of a Milestone Deadline or the completion of the whole Work within the Contract Time; (d) the delay was not caused by Contractor or its subcontractors or suppliers, including but not limited to their breaches of contract or the standard of care; (e) the delay was not associated with loss of time resulting from the necessity of submittals to Owner for approval, or from

necessary Owner surveys, measurements, inspections and testing; (f) the delay was not caused by usual or common weather for the time of year, including usual or common severe weather; and (g) the delay could not have been prevented or mitigated by the exercise of care, prudence, foresight, and diligence by Contractor.

8.4.2 Notice by Contractor Required. The Contractor shall within five (5) calendar days of beginning of any such delay (unless Owner grants in writing a further period of time to file such notice prior to the date of final payment under the Contract) notify the Owner in writing of causes of delay. Contractor's failure to provide timely notice of a request for an extension of time shall act as a waiver of any right to receive a time extension. Owner will then ascertain the facts and extent of the delay and grant an extension of time when, in its judgment, the findings of fact justify such an extension. The Owner's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Work affected by the delay and shall not apply to other portions of the Work not so affected. The sole remedy of Contractor for extensions of time under paragraph 8.4.1 shall be an extension of the Contract Time at no cost to the Owner.

8.4.3 Compensable Delays. Compensable delays are those excusable delays (see above) for which Contractor is also entitled to money. To be compensable, an excusable delay must be one for which the Owner is responsible, where the delay was unreasonable under the circumstances involved, and where the delay was not within the contemplation of the parties; *however*, Contractor shall not be entitled to monetary compensation when (a) Contractor could have reasonably anticipated the delay and avoided or minimized the cost impacts of it, (b) there was a concurrent delay which does not qualify for monetary compensation under this paragraph, (c) the cause of the delay was reasonably unforeseen by the Owner or the delay was caused by factors beyond the control of the Owner, including but not limited to a delay caused by a utility company's failure to perform despite Owner's reasonable arrangements for such performance; or (d) any other defense available to Owner under law or equity applies. Contractor has the burden of proving that any delay was excusable and compensable, including an analysis that establishes non-concurrency. Contractor compensation shall be limited to the daily amount noted by the contractor in the Bid Form.

8.4.4 Early Completion. Regardless of the cause therefore, the Contractor may not maintain any Claim or cause of action against the Owner for damages incurred as a result of its failure or inability to Complete its Work in a shorter period than established in the Contract Documents.

8.4.5 Liquidated Damages. Failure to Complete the Work within the time and in the manner provided for by the Contract Documents shall subject the Contractor to liquidated damages of \$1,000 per day and withheld from final payment. For purposes of liquidated damages, the concept of substantial completion shall not constitute Completion and is not part of the Contract.

8.5 GOVERNMENT APPROVALS - Owner shall not be liable for any delays or damages related to the time required to obtain government approvals.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 CONTRACT SUM - The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 COST BREAKDOWN - On forms approved by the Owner within ten (10) days of the Owner sending the Agreement for Contractor signature, the Contractor shall furnish a schedule of values and a list of all subcontractors and suppliers. The Owner shall review all submissions received in a timely manner. All submissions must be accepted by the Owner before becoming the basis of any payment.

9.3 APPLICATIONS FOR PAYMENT - On or before the fifth (1st) day of each calendar month during the progress of the portion of the Work for which payment is being requested, the Contractor shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the Schedule of Values through the end of that calendar month. As the Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from Owner, to assure that there will be no delays, payment by the Owner for stored material shall be made only in unusual circumstances where the Owner specifically approves the payment in writing. The Contractor warrants that title to all work covered by an Application for Payment will pass to the Owner no later than the time of payment. Payments of final agreed amount will be sent by the 1st of the following month.

9.4 REVIEW OF PROGRESS PAYMENT - The Owner will, within seven (7) days after receipt of the Contractor's Application for Payment, either accept such payment or notify the Contractor in writing of the Owner's reasons for withholding acceptance in whole or in part. The review of the Contractor's Application for Payment by the Owner is based on the Owner's observations at the Site and the data comprising the Application for Payment whether the Work has progressed to the point indicated and whether, to the best of the Owner's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents.

9.5 DECISIONS TO WITHHOLD PAYMENT - The Owner may decide to withhold a progress or retention payment in whole, or in part, to the extent reasonably necessary to protect the Owner. In addition, the Owner may withhold payment, in whole, or in part, to such extent as may be necessary to protect the Owner from loss because of any acts or omissions by Contractor, including any rights to withhold mentioned in the Contract Documents or based on stop payment notices. If Contractor believes that a withholding of a progress or retention payment breaches the contract or violates law, then Contractor must submit a Claim pursuant to Article 4 above.

9.6 PROGRESS PAYMENTS AND WITHHOLDING RETENTION - Progress payments shall be made in accordance with Public Contract Code sections 7201, 9203, and 20104.50.

Owner shall retain five percent (5%) of any approved progress payment, except it may retain more if it makes special findings pursuant to Public Contract Code section 7201. Owner shall withhold not less than 5% of the Contract Sum (“retainage,” or “retention”) until Completion and acceptance of the project.

9.7 COMPLETION OF THE WORK - Upon receipt of the Contractor’s request for final inspection, the Owner will make an inspection to determine whether the Work, or designated portion thereof, is Complete. If the Owner’s inspection discloses any item which is not Completed in accordance with the requirements of the Contract Documents, the Contractor shall diligently Complete or correct such item.

9.8 PARTIAL OCCUPANCY OR USE - Owner may occupy or use any Completed or partially Completed portion of the Work at any stage without accepting that Work and without waiving rights to claim damages as to that Work. The Owner and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents.

9.9 ACCEPTANCE, NOTICE OF COMPLETION, FINAL PROGRESS PAYMENT, AND RELEASE OR PAYMENT OF RETENTION - After the Owner’s representatives find the Work fully performed, the Owner’s governing body may accept the Work. After completion (as defined in Civil Code section 9200), the Owner may record a Notice of Completion with the County Recorder.

After the Owner’s representatives find the Work fully performed, they shall so notify Contractor, who shall then submit to the Owner its final application for progress payment. Any application for final progress payment shall be accompanied by the same details required for monthly progress payments. Acceptance of final progress payment shall constitute a waiver of Claims except for those previously identified in writing and identified by that payee as unsettled at the time of final payment. Contractor shall, upon receipt of final progress payment from Owner, pay the amounts due Subcontractors and provide final lien waivers..

Owner shall release or pay the retainage upon completion of all close out items, and receipt of final lien waivers from all the Contractor’s Subcontractors, and may withhold from the retainage, pursuant to Public Contract Code sections 9203 and 7107.

If required to do so under Labor Code section 1773.3(d), Owner shall withhold from final payments.

9.10 SUBSTITUTION OF SECURITIES - In accordance with section 22300 of the Public Contract Code, the Owner will permit the substitution of securities for any retention monies withheld by the Owner to ensure performance under the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Owner,

or with a state or federally chartered bank as the escrow agent, who shall then pay such retention monies to the Contractor. Upon Completion of the Contract, the securities shall be returned to the Contractor if Owner has no basis to withhold under the Contract Documents. Securities eligible for investment under this section shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest-bearing, demand-deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Owner. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. Any escrow agreement used shall be substantially similar to the form set forth in Public Contract Code section 22300.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS - The Contractor shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract, and provide owner with a Safety Plan prior to commencing work. Subcontractors have the responsibility for participating in, and enforcing, the safety and loss prevention programs established by the Contractor for the Project, which will cover all Work performed by the Contractor and its Subcontractors. Subcontractors shall promptly report in writing and by phone to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. The Contractor will provide and maintain at the Site first-aid supplies for minor injuries.

10.2 SAFETY OF PERSONS AND PROPERTY - The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: (A) Employees on the Work and other persons who may be affected thereby; (B) the Work, material, equipment, tools, construction equipment, and machinery to be incorporated therein or necessary for the proper execution and Completion of the Work, whether in storage on or off the Site, under the care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and (C) other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent Sites and utilities.

When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on

such activities under supervision of properly qualified personnel. The Contractor shall notify the Owner any time that explosives or hazardous materials are expected to be stored on Site. Location of storage shall be coordinated with the Owner and local fire authorities.

10.3 PROTECTION OF WORK AND PROPERTY - The Contractor and Subcontractors shall continuously protect the Work, the Owner's property, and the property of others, from damage, injury, or loss until the earlier of formal acceptance of the Work or Completion of the Work. The Contractor and Subcontractors shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the Owner; except that for projects not solely funded through revenue bonds, (a) Contractor shall not be responsible for damages caused by a tidal wave to the extent that the damages exceed 5% of the Contract Sum, and (b) Contractor shall not be responsible for damages caused by an earthquake above 3.5 on the Richter Scale in magnitude to the extent that the damages exceed 5% of the Contract Sum, per Public Contract Code §7105(a).

The Contractor and the Subcontractors shall use only those ingress and egress routes designated by the Owner as per Contractor supplied Staging Plan provided to owner prior to commencement of work; observe the boundaries of the Site designated by the Owner, park only in those areas designated by the Owner, which areas may be on or off the Site, and comply with any parking control program established by the Owner such as furnishing license plate information and placing identifying stickers on vehicles.

10.4 EMERGENCIES - In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 7. The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

10.5 HAZARDOUS MATERIALS - In the event the Contractor encounters or suspects the presence on the Site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), lead paint, or any other material defined as being hazardous by section 25249.5 of the California Health and Safety Code, which (a) has not been rendered harmless, and (b) the handling or removal of which is not within the scope of the Work, the Contractor shall immediately stop performing the Work in the area affected and report the condition to the Owner and the Architect in writing, whether or not such material was generated by the Contractor or the Owner.

Additionally, as per Hazardous Materials reports attached to bid documents, any required special remediation and/or removal work, is to be included in the Contractor's price, and the work completed as per Hazardous Materials codes and information noted on reports.

ARTICLE 11 INSURANCE AND BONDS

11.1. CONTRACTOR'S LIABILITY INSURANCE

11.1.1 Liability Insurance Requirements. By the earlier of the deadline set forth in the Instructions to Bidders or the commencement of the Work and within limits acceptable to the Owner, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A+, Class XII status as rated in the most recent edition of Best's Insurance Reports such commercial general liability insurance on an occurrence basis, including products and completed operations, bodily injury, personal injury, property damage, personal and advertising injury with limits for these coverages of no less than \$5 million per occurrence. If a general aggregate limit applies, either the general aggregate limits shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit or \$10 million. It shall also provide coverage for automobile liability insurance per accident for bodily injury and property damage combined single limit as set forth in the Agreement, as will protect the Contractor from claims, which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations are by the Contractor, by a Subcontractor, by Sub-subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. As to the auto coverage, Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than \$5,000,000 per accident for bodily injury and property damage. This insurance shall be subject to the approval of Owner, and Owner's approval shall not be unreasonably withheld. Owner's decision shall be deemed reasonable if it requires compliance with the terms set forth as requirements herein. The Contractor shall require its Subcontractors and any Sub-subcontractors to take out and maintain similar public liability insurance and property damage insurance in like amounts.

Owner may partially or fully occupy and/or use the Work before acceptance of the entire Work by the Owner. All of contractor's required insurance must allow such occupancy and/or use without prior consent from insurer.

11.1.2 Additional Insured Endorsement Requirements. The Contractor shall name, on any policy of insurance, the Owner as additional insureds.

11.1.3 Workers' Compensation Insurance. During the term of this Contract, the Contractor shall provide workers' compensation insurance for all of the Contractor's employees engaged in Work under this Contract on or at the site of the Project and, in case any of the Contractor's work is sublet, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract. This shall include workers insurance required by the State of California, with Statutory Limits and Employers' Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.

11.1.4 Builder's Risk / "All Risk" Insurance. Not required by Contractor.

11.1.5 Fire Insurance. Before the commencement of the Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work included under the Contract Documents, insuring the full replacement value of such Work as well as the cost of any removal and demolition necessary to replace or repair all Work damaged by fire. The amount of fire insurance shall be subject to approval by the Owner and shall be sufficient to protect the Work against loss or damage in full until the Work is accepted by the Owner. Should the Work being constructed be damaged by fire or other causes during construction, it shall be replaced in accordance with the requirements of the drawings and specifications without additional expense to the Owner.

11.1.6 Other Insurance. The Contractor shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations. Such insurance shall be subject to the approval of Owner, and Owner's approval shall not be unreasonably withheld.

11.1.7 Proof of Carriage of Insurance. The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance, certificates, and an Additional Insured Endorsement and Declarations Page have been obtained and delivered in duplicate to the Owner for approval, and such approval shall not be unreasonably withheld.

11.8 Other Insurance Provisions. The insurance policies required of the Contractor shall contain, or be endorsed to contain, the following provisions:

A. The District, its officers, officials, directors, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or **both** CG 20 10 CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).

B. For any claims related to this project, the Contractor's insurance coverage shall be primary and non-contributory insurance coverage at least as broad as ISO CG 20 0104 13 as respects the Owner, its officers, directors, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Owner, its officers, officials, directors, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

C. Each insurance policy required by this Article shall provide that coverage shall not be canceled, except with notice to the Owner.

D. Waiver of Subrogation. Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers Compensation policy shall be endorsed with a waiver of subrogation in favor of the Owner for all work performed by the Contractor, its employees, agents and subcontractors. Contractor shall furnish the Owner with original certificates and amendatory endorsement or copies of the applicable policy language effecting coverage required by this clause and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the Owner before work commences. However, failure to obtain the required the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Owner reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. Owner reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

E. Subcontractors. Contractor shall require and verify that all subcontractors, maintain insurance meeting all requirements stated herein, and Contractor shall ensure that Owner is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

11.1.8 Compliance. In the event of the failure of any contractor to furnish and maintain any insurance required by this Article, the Contractor shall be in default under the Contract.

11.2 PERFORMANCE AND PAYMENT BONDS - Unless otherwise specified in the Contract Documents, prior to commencing any portion of the Work, the Contractor shall apply for and furnish Owner separate payment and performance bonds equal to the Contract Price for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure section 995.120 shall be accepted. The surety insurers must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bonds, have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurers selected by Contractor and to require Contractor to obtain bonds from surety insurers satisfactory to the Owner.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK - If a portion of the Work is covered contrary to the Owner's request or to requirements specifically expressed in the Contract Documents, Contractor

must, if required in writing by the Owner, uncover it for the Owner's observation and replace the removed Work at the Contractor's expense without change in the Contract Sum or Time.

12.2 CORRECTION OF WORK; WARRANTY - The Contractor shall promptly correct the Work rejected by the Owner for failing to conform to the requirements of the Contract Documents, until the statutes of limitation (or repose) and all warranties have run, as applicable, and whether or not fabricated, installed or Completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Owner's expenses and costs incurred.

If, within one (1) year after Completion of the Work or within a longer time period for an applicable special warranty or guarantee required by the Contract Documents, any of the Work does not comply with the Contract Documents, the Contractor shall correct it after receipt of Owner's written notice to do so, unless the Owner has previously waived in writing such right to demand correction. Contractor shall correct the Work promptly, and passage of the applicable warranty period shall not release Contractor from its obligation to correct the Work if Owner provided the written notice within the applicable warranty period. Contractor's obligation to correct the warranty item continues until the correction is made. After the correction is made to Owner's satisfaction, a new warranty period of the same length as the original warranty period shall run on the corrected Work. The obligations under this paragraph 12.2 shall survive acceptance of the Work under the Contract and termination of the Contract.

The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are not corrected by the Contractor or accepted by the Owner. If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with paragraph 2.4. The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether Completed or partially Completed, caused by the Contractor's correction or removal of the nonconforming Work. Nothing in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW - The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS - Owner shall, at Contractor's cost, timely notify Contractor of Owner's receipt of any third party claims relating to the Contract.

13.3 RIGHTS AND REMEDIES; NO WAIVER - Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not

a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by the Inspector of Record, the Owner, or the Architect shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed to in a written amendment to the Contract.

13.4 TESTS AND INSPECTIONS - Tests, inspections, and approvals of portions of the Work required by the Contract Documents will comply with Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

13.4.1 Independent Testing Laboratory. The Owner will select and pay an independent testing laboratory to conduct all tests and inspections as needed, including shipping or transportation costs or expenses (mileage and hours). Selection of the materials required to be tested shall be made by the laboratory and not by the Contractor. However, if Contractor requests that the Owner use a different testing laboratory and Owner chooses to approve such request, Contractor shall reimburse the Owner for any additional shipping or transportation costs or expenses (mileage and hours). Owner may invoice such costs or expenses to the Contractor or withhold such costs or expenses from progress payments and/or retention.

13.4.2 and 13.4.3 N/A

13.4.4 Additional Testing or Inspection. If the CM, the Architect, the Owner, or public authority having jurisdiction determines that portions of the Work require additional testing, inspection, or approval not included under section 13.4, the Inspector of Record will, upon written authorization from the Owner, make arrangements for such additional testing, inspection, or approval. The Owner shall bear such costs except as provided in section 13.4.5.

13.4.5 Costs for Retesting. If such procedures for testing, inspection, or approval under sections 13.4, 13.4.1, 13.4.2 and 13.4.4 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the Owner, invoiced to the Contractor, and, among other remedies, can be withheld from progress payments and/or retention.

13.4.6 Costs for Premature Test. In the event the Contractor requests any test or inspection for the Project and is not completely ready for the inspection, the Contractor shall be invoiced by the Owner for all costs and expenses resulting from that testing or inspection, including, but not limited to, the Architect's fees and expenses, and the amount of the invoice can among other remedies, be withheld from progress payments and/or retention.

13.4.7 Tests or Inspections not to Delay Work. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.5 TRENCH EXCAVATION - N/A

13.6 DEBARMENT - Pursuant to Public Contract Code section 6109, no contractor or subcontractor may perform work on a public works project if ineligible to perform work on the project pursuant to section 1777.1 of the Labor Code.

13.7 ASSIGNMENT OF ANTITRUST CLAIMS - Pursuant to Public Contract Code section 7103.5 and Government Code section 4552, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Bus. & Prof. Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final progress payment to the Contractor, without further acknowledgment by the parties.

13.8 AUDIT - Contractor's Contract books, records and files shall be subject to audit and examination by the Office of the Auditor General under Government Code section 8546.7 and any amendments thereto. During progress of the Work and for five (5) years after Completion of the Work, Owner shall also have the right to an audit of Contractor's books, records, subcontracts, material and equipment contracts, files, and information related to the contract, and Contractor must cooperate by producing all requested items within seven (7) days.

13.9 STORM WATER DISCHARGE PERMIT - If applicable, the Contractor shall file a Notice of Intent to comply with the terms of the general permit to discharge storm water associated with construction activity (WQ Order No. 920-08-DWQ), if required, but nevertheless provide SWPPs Plan to the Owner, prior to the start of any construction activity.

**ARTICLE 14
TERMINATION OR SUSPENSION OF THE CONTRACT**

14.1 TERMINATION BY THE CONTRACTOR FOR CAUSE - Contractor may not terminate performance for convenience. Contractor may only terminate performance for cause if the Work is stopped by others for a period of one hundred eighty (90) consecutive days through no act or fault of the Contractor, a Subcontractor of any tier, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, and the Work was stopped by others for one of the following reasons: (A) Issuance of an order of a court or other public authority having jurisdiction which requires Owner to stop all Work; or (B) an act of government, such as a declaration of national emergency, making material unavailable which requires Owner to stop all Work. If such grounds exist, the Contractor may serve written notice of such grounds on Owner and demand a meet-and-confer conference to negotiate a resolution in good faith within twenty (20) days of Owner's receipt of such notice. If such conference does not lead to resolution and the grounds for termination still

exist, Contractor may terminate the Contract and recover from the Owner payment for Work executed and for reasonable verified costs with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages for the Work executed, but excluding overhead (field and home office) and profit for (i) Work not performed and (ii) the period of time that the Work was stopped.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 Grounds for Termination. The Owner may terminate performance of the Contract if the Contractor:

- A. Refuses or fails to supply enough properly skilled workers or proper materials, or refuses or fails to take steps to adequately prosecute the Work to meet a Milestone Deadline or Complete within the Contract Time;
- B. Fails to make payment to Subcontractors for materials or labor in accordance with Public Contract Code section 10262 or Business and Professions Code section 7108.5, as applicable;
- C. Violates Labor Code section 1771.1(a), subject to the provisions of Labor Code section 1771.1(f);
- D. Disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or
- E. Otherwise is in breach of the Contract Documents.

14.2.2 Notification of Termination. When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner, give notice to Contractor of the grounds for termination and demand cure of the grounds within seven (7) days (a “Notice of Intent to Terminate”). If Contractor fails to either (a) completely cure the grounds for termination within seven (7) days or (b) reasonably commence cure of the grounds for termination within seven (7) days and reasonably continue to cure the grounds for termination until such cure is complete, then Owner may terminate performance of the Contract effective immediately upon service of written Notice of Termination and may, subject to any prior rights of Contractor’s surety on the performance bond (“Surety”):

- A. Take possession of the Site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- B. Accept assignment of subcontracts pursuant to section 5.4; and
- C. Complete the Work by whatever reasonable method the Owner may deem expedient, including tender of completion to the Surety.

14.2.3 Payments. If the Owner terminates performance of the Contract for one of the reasons stated in section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is Complete. If the unpaid balance of the Contract Sum exceeds costs of Completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This payment obligation shall survive Completion of the Work.

14.2.4 Wrongful Termination. To claim a breach of contract or violation of law based on alleged wrongful termination for cause by the Owner, or if Contractor otherwise seeks any payment or damages related to a termination, within fifteen (15) days of the alleged breach of contract, violation of law, or wrongful termination Contractor shall submit a Claim pursuant and subject to Section 4.5. The Contractor need not submit a Notice of Potential Change or a Change Order Request.

14.2.5 Inclusion of Termination for Convenience. Any purported termination by Owner for cause under this section 14.2, which is revoked or determined to not have been for cause, shall be deemed to have been a termination for convenience effective as of the same date as the purported termination for cause.

14.3 SUSPENSION OR TERMINATION BY THE OWNER FOR CONVENIENCE

14.3.1 Suspension by Owner. The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.1.1 Adjustments. An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent:

A. That performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or

B. That an equitable adjustment is made or denied under another provision of this Contract.

14.3.1.2 Adjustments for Fixed Cost. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

14.3.2 Termination by the Owner for Convenience.

14.3.2.1 The Owner may, at any time, terminate performance of the Contract for the Owner's convenience and without cause.

14.3.2.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

1. Cease operations as directed by the Owner in the notice;
2. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
3. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

14.3.2.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

14.4 NOT A WAIVER - Any suspension or termination by Owner of performance by Contractor for convenience or cause under this Article 14 shall not act as a waiver of any claims by Owner against Contractor or others for damages based on breach of contract, negligence or other grounds.

14.5 MUTUAL TERMINATION FOR CONVENIENCE - The Contractor and the Owner may mutually agree in writing to terminate performance of this Contract for convenience. The Contractor shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.

14.6 EARLY TERMINATION - Notwithstanding any provision herein to the contrary, if for any fiscal year of this Contract the governing body of the Owner fails to appropriate or allocate funds for future periodic payments under the Contract after exercising reasonable efforts to do so, the Owner may upon thirty (30) days' notice, order performance of the Work to cease. The Owner will remain obligated to pay for the Work already performed but shall not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and for which the Work has not been done.